IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:25-8-2006

CORAM:

THE HONOURABLE MR.JUSTICE P.SATHASIVAM
and
THE HONOURABLE MR.JUSTICE S.MANIKUMAR

H.C.P.No.534 of 2006

Ganesan @ Bomb Ganesan ..Petitioner

Vs.

1.The Commissioner of Police,
Greater Chennai,Chennai 600 008.

2.The Secretary to Government,
Prohibition and Excise Department,
Fort St.George,Chennai 600 009. ..Respondents.

Petition filed under Article 226 of the Constitution of India for the issue of a writ of Habeas Corpus as stated therein.

For petitioner : Mr.R.Ravichandran

For respondents : Mr. M. Babu Muthu Meeran
Addl. Public Prosecutor

ORDER

(Order of the Court was made by P. SATHASIVAM,J.)

The petitioner by name Ganesan @ Bomb Ganesan, who was detained as a "Goonda" as contemplated under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982), by the impugned detention order dated 05.04.2006, challenges the same in this Petition.

2. Heard learned counsel for the petitioner as well as learned Additional Public Prosecutor for the respondents.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

3. At the foremost, the learned counsel for the petitioner submitted that the detaining authority relied on the statements of witnesses alleged to have been made before the sponsoring authority, but copies of the same were not furnished to the detenu and hence, the detention order gets vitiated. He further contended that in spite of the request made, copies of those statements were furnished only on 15.8.2006, whereas the detention order was passed on 5.4.2006. While elaborating the above contention, the learned counsel for the petitioner has brought to our notice the ground No.3 in the grounds of detention wherein the detaining authority has stated,

> " The Inspector of Police examined the witnesses and recorded their statements. The Inspector of Police during the course of investigation arrested Tvl.Narasimhan, Ganesan @ Bomb Ganesan and Appu @ Santhanakumar on 28.2.2006 at 13.00 hrs. at Ponniamman Koil near the bus stop, Madipakkam and examined them. Their statements were recorded. "

and submitted that inasmuch as the statements said to have been made by the witnesses were relied on by the detaining authority while arriving at subjective satisfaction, copies of those statements should have been supplied to the detenu along with the grounds of detention and furnishing copies on 15.8.2006, only after a period of four months from the date of detention order will not cure the defect.

4. Learned Additional Public Prosecutor submitted that when the relevant documents were supplied to the detenu by the sponsoring authority, some of the statements were left out while stitching the same, but copies of those statements were furnished subsequently. According to him, no prejudice was caused to the detenu and admittedly, the statement of Saravanakumar, complainant and affected person and all other relevant documents were furnished to the detenu within the prescribed time. He has brought to our notice that the detaining authority very much relied on the statement of Saravanakumar who was wrongfully restrained by the detenu and another accused and threatened with knife by uttering filthy words. The learned Additional Public Prosecutor took us through the First Information Report in entirety which contains all the details including the behaviour and the acts committed by the detenu and the other accused.

5. We verified the entire contents of the First Information Report, and the learned Additional Public Prosecutor is right in contending that it refers all the details. It is also brought to our notice that the remand report which is available at page No.120 of the Paper Book supplied to the detenu also refers all the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

details including the statements of Saravanakumar and others. We also verified the confession statement of the detenu as well as the co-accused. All the above materials were considered by the detaining authority and after satisfying himself and in order to maintain public peace and public order, he clamped the detention order.

6. Learned counsel for the petitioner heavily relied on the decision of the Supreme Court reported in STATE OF U.P. v. KAMAL KISHORE (1988 CRI.L.J.405:AIR 1988 SC 208). In that case, the Supreme Court dismissed the appeal filed by the State affirming the view taken by the Allahabad High Court that the detenus were supplied only with copy of F.I.R. and also the extract of charge sheet, but not the statements recorded under section 161 Cr.P.C., and hence, the detention order passed under the National Security Act was liable to be quashed. We verified the factual details of the case before the Supreme Court. Paragraph-7 of the judgment of the Apex Court makes it clear that the names of the detenus were not mentioned in the F.I.R. in respect of the incident in ground No.1. In such circumstances, it was held that the non-supply of vital documents would undoubtedly prevent the detenu from making an effective representation. In the present case, we have already verified that the details were found in the F.I.R., in the statement of complainant Saravanakumar, in the remand report, and also in the confession statements of the detenu and co-accused. In view of the same and of the fact that the detaining authority considered all those materials and after satisfying himself he passed the order of detention, we are of the view that the decision of the Supreme Court in Kamal Kishore case (1988 CRI.L.J.405) is not applicable to the case on hand.

7. The other decision relied on by the learned counsel for the petitioner is the judgment of this Court reported in BEPARI SALEEM v. THE STATE OF TAMIL NADU (2005(2) CTC 469). In that decision, the Division Bench in which one of us (P.SATHASIVAM,J.) was a party, after finding that copy of the remand extension order which was relied on by the detaining authority while passing the detention order, must have been supplied to the detenu along with grounds not later than 5 days and in exceptional circumstances not later than 15 days and the failure to supply the same would affect the detention order, set aside the same. For the same reasons which we recorded in the earlier paragraph of this order, we are of the view that the said decision is also not applicable to the instant case.

8. In UNION OF INDIA v. CHAYA GHOSHAL [(2006) 1 SCC (Cri) 257], the Supreme Court, while considering the purpose and intend of preventive detention, concluded thus,

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

"8. ..... The object of the law of preventive detention is not punitive but only preventive. It is resorted to when the executive is convinced that such detention is necessary in order to prevent the person detained from acting in a manner prejudicial to certain objects which are specified by the law concerned. The action of the executive in detaining a person being only precautionary, normally the matter has necessarily to be left to the discretion of the executive authority. It is not practicable to lay down objective rules of conduct in an exhaustive manner, the failure to conform to which should lead to detention. The satisfaction of the detaining authority, therefore, is considered to be of primary importance, with great latitude in the exercise of its discretion. The detaining authority may act on any material and on any information that it may have before it. Such material and information may merely afford basis for a sufficiently strong suspicion to take action, but may not satisfy the tests of legal proof on which alone a conviction for offence will be tenable. The compulsions of the primordial need to maintain order in society without which the enjoyment of all rights, including the right to personal liberty of citizens would lose all their meanings, provide the justification for the laws of preventive detention. Laws that provide for preventive detention posit that an individual's conduct prejudicial to the maintenance of public order or to the security of State or corroding financial base provides grounds for satisfaction for a reasonable prognostication of possible future manifestations of similar propensities on the part of the offender. This jurisdiction has at times been even called a jurisdiction of suspicion. The compulsions of the very preservation of the values of freedom of democratic society and of social order might compel a curtailment of individual liberty. "To lose our country by a scrupulous adherence to the written law", said Thomas Jefferson "would be to lose the law itself, with life, liberty and all those who are enjoying with us, thus absurdly sacrificing the end to the needs." This, no doubt, is the theoretical jurisdictional justification for the law enabling preventive detention. But the actual manner of administration of the law of preventive detention is of utmost importance. The law has to be justified by striking the right balance between individual liberty on the one hand and the needs of an orderly society on the other".

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

The above mandate of the Supreme Court makes it clear that the satisfaction of the detaining authority is considered to be primary importance with great latitude in the exercise of its discretion. It is also clear that the detaining authority can act on any material and on any information presented before it.

9. In H.C.P.No.189 of 2006 (Ramesh vs. State of Tamil Nadu and another), this Court by order dated 19.6.2006 has concluded that even in the absence of remand extension order, if there is any other material to show that the detenu was in remand in Central Prison on the date of passing the detention order, the detaining authority is free to pass an order depending upon other materials. In our case, we have already concluded that the detention order was passed on the basis of relevant materials, copies of which were furnished to the detenu within the prescribed time. Even the left out statements of some of witnesses were also furnished to the detenu on the basis of representation. Accordingly, we reject the first contention.

10. Learned counsel appearing for the petitioner next contended that though in the grounds of detention, particularly in para-4, the detaining authority has relied on Crime Nos.420/2006 and 422/2006 on the file of S7, Madipakkam Police Station, the remand order in Crime No.420/2006 was not furnished to the detenu along with the grounds of detention and the English version of the same was furnished on 1.6.2006 and its Tamil version was furnished on 6.6.2006. On the other hand, the learned Additional Public Prosecutor took us through the details mentioned in the Special Report which refers both the crime numbers, viz., 420/2006 and 422/2006. Further, it is not in dispute that the remand order in Cr.No.420/2006 was furnished to the detenu. Though it is stated that the detenu was prejudiced due to the non-supply of remand order in Cr.No.420/2006 within the prescribed time, no prejudice is shown before us. In this regard, it is useful to refer the unreported decision of this Court rendered in H.C.P.No.834 of 2002 dated 12.9.2002 (Mrs.Jaya vs. The Secretary to Govt. of Tamil Nadu, Prohibition and Excise Department, Fort St.George, Chennai 600 009 and another) wherein after referring the decision of Supreme Court in Pownammal v. State of Tamil Nadu (1999 SCC (Crl.) 231), in which, the Bench of this Court concluded that the prejudice should be shown by the detenu on account of non-supply of documents. In the present case, as observed earlier, no prejudice is shown by the detenu. Accordingly, the second contention of the learned counsel for the petitioner fails.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

11. No other grounds have been raised before us by the learned counsel appearing for the petitioner.

In the result, the H.C.P. fails and the same is dismissed.

kh

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Commissioner of Police,
Greater Chennai,Chennai 600 008.

2.The Secretary to Government,
Prohibition and Excise Department,
Fort St.George,Chennai 600 009.

jp (co)

dv/29.8.06

P.D. Order in
H.C.P.No.534 of 2006

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/